

DOCUMENT TO BE LODGED

United States v. John B. Knight, Jr.; Robert D. Brown; National Petroleum Marketing, Inc.; Sunwest Express, Inc.; and Navajo Trails, Inc.,

CIV-04-0626-PHX-JWS

CONSENT DECREE

1 RONALD J. TENPAS
2 Acting Assistant Attorney General
3 Environmental Enforcement Section
4 Environment & Natural Resources Division
5 U.S. Department of Justice

6 DIANE J. HUMETEWA
7 United States Attorney
8 District of Arizona

9 SUE A. KLEIN
10 Assistant U.S. Attorney
11 Arizona State Bar No. 11253
12 Two Renaissance Square
13 40 N. Central Avenue, Ste. 1200
14 Phoenix, Arizona 85004-4408
15 Telephone: (602) 514-7500
16 E-mail: sue.klein@usdoj.gov

17 UNITED STATES DISTRICT COURT
18 DISTRICT OF ARIZONA

19 United States of America,
20
21 Plaintiff,

22 v.

23 John B. Knight, Jr.; Robert D. Brown;
24 National Petroleum Marketing, Inc.;
25 Sunwest Express, Inc.; and Navajo Trails,
26 Inc.,

27 Defendants.
28

CIV-04-0626-PHX-JWS

CONSENT DECREE

I. RECITALS

20 WHEREAS, the United States of America (United States), on behalf of the Administrator
21 of the United States Environmental Protection Agency (EPA) filed a Complaint in this matter
22 alleging that Defendants John B. Knight, Jr., Robert D. Brown, National Petroleum Marketing,
23 Inc., Sunwest Express, Inc., and Navajo Trails, Inc., were the owners and operators of an
24 underground storage tank (UST) facility, a gas station, located within the Navajo Nation
25 reservation in Tuba City, Arizona, and violated Subtitle I of the Solid Waste Disposal Act,
26 commonly known as the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C.
27 §§ 6991 - 6991i, in connection with maintaining and monitoring corrosion protection to prevent
28

1 releases; in connection with release detection requirements applicable to USTs, in connection
2 with reporting and investigation of suspected releases, and in connection with maintaining
3 financial responsibility for accidental releases from the underground storage tanks;

4 WHEREAS, the United States, in its Complaint seeks, *inter alia*, the imposition of civil
5 penalties against Defendants for the violations of RCRA;

6 WHEREAS, National Petroleum Marketing, Inc. filed for bankruptcy on October 21,
7 1997, and a final decree in bankruptcy was entered on March 20, 2003.

8 WHEREAS, the Defendants do not admit liability to the United States arising out of the
9 transactions or occurrences alleged in the complaint;

10 WHEREAS, the Parties agree, and this Court finds, that this Consent Decree has been
11 negotiated by the Parties in good faith, that implementation of this Consent Decree will avoid
12 prolonged and complicated litigation between the Parties, and that this Consent Decree is fair,
13 reasonable, and in the public interest, and Defendants are settling solely to avoid the cost of
14 litigation;

15 NOW, THEREFORE, before the taking of any testimony, without the trial or adjudication
16 of any issue of fact or law, without this Consent Decree constituting any evidence, or waiver or
17 admission of fact or law by any Party, with this Consent Decree having been subject to public
18 comment pursuant to 28 C.F.R. § 50.7, and with the consent of the Parties, IT IS HEREBY
19 ORDERED, ADJUDGED AND DECREED as follows:

20 **II. DEFINITIONS**

21 1. Whenever the terms set forth herein are used in this Consent Decree or in the
22 Attachments or Appendices hereto and incorporated hereunder, the following definitions shall
23 apply:

- 24 a. "Plaintiff" or "United States" shall mean the United States of America, on
25 behalf of the Environmental Protection Agency (EPA);
- 26 b. "RCRA" means the Solid Waste Disposal Act, as amended, 42 U.S.C. §§
27 6901, *et seq.* (also known as the Resource Conservation and Recovery Act);

- 1 c. "Complaint" shall mean the complaint filed by Plaintiff in this action;
- 2 d. "Decree" shall mean this Consent Decree, as entered by the Court;
- 3 e. "Defendants" shall mean John B. Knight, Jr.; Robert D. Brown; National
- 4 Petroleum Marketing, Inc.; Sunwest Express, Inc.; and Navajo Trails, Inc.;
- 5 f. "Effective Date" shall mean the date of entry of this Decree by the Court after
- 6 satisfaction of the public notice and comment procedures of 28 C.F.R. § 50.7;
- 7 g. "Interest" shall mean the rate of interest established pursuant to 28 U.S.C. §
- 8 1961, and shall be compounded annually;
- 9 h. "Facility" shall mean the gasoline service station known as "SuperFuels"
- 10 located on the western corner of state highways 160 and 264 in Tuba City,
- 11 Arizona and within the Navajo Nation reservation;
- 12 i. "Facility USTs" shall mean the four underground storage tanks located at the
- 13 Facility, which are the subject of this action.

14 **III. JURISDICTION AND VENUE**

15 2. This Court has jurisdiction over the subject matter and over the Parties under

16 28 U.S.C. §§ 1331, 1345, and 1355 and 42 U.S.C. § 6991e(a)(1).

17 3. Venue is proper in this judicial district pursuant to 42 U.S.C. § 6991e(a)(1) and

18 28 U.S.C. §§ 1391(b) - (c) and 1395 (a) because this action arises from violations of Subtitle

19 I of RCRA and the implementing regulations promulgated thereto, the violations occurred in this

20 District and because the defendants each do business in this District and/or are found within this

21 District.

22 4. The United States Department of Justice has authority to bring this civil enforcement

23 action pursuant to 28 U.S.C. §§ 516, 519 and 42 U.S.C. § 6991e.

24 **IV. PARTIES BOUND AND NOTICE OF TRANSFER**

25 5. The provisions of this Consent Decree shall apply to and be binding upon the United

26 States and upon Defendants, Defendants' successors and assigns, and upon Defendants' officers,

27 directors, employees, and agents acting in their respective capacities as officers, directors,

28

1 employees, and agents of Defendants, and upon all other persons and entities acting under the
2 control or direction of Defendants.

3 6. No change in ownership or corporate status shall in any way alter Defendants'
4 responsibilities under this Decree.

5 **V. CIVIL PENALTY**

6 7. After entry of this Consent Decree and within thirty (30) days of the receipt of the
7 electronic transfer procedures described in paragraph 8, Defendants shall pay a civil penalty
8 amount as follows: Defendant Sunwest Express, Inc., on behalf of itself and Defendants John
9 B. Knight, Jr., National Petroleum Marketing, Inc., and Navajo Trails, Inc., shall pay a civil
10 penalty of \$49,500 to the United States and Defendant Robert D. Brown shall pay a civil penalty
11 of \$5,500 to the United States, pursuant to Sections 3008(g) and 9006(d)(2), 42 U.S.C. §§
12 6928(g), 6991e(d)(2), and 40 C.F.R. § 19.4, which payment, shall be in full satisfaction of
13 Defendants' respective civil liability for the violations alleged by the United States in the
14 Complaint, as set forth in and subject to Section VIII of this Decree (Effect of
15 Settlement/Reservation of Rights).

16 8. Payments under this Consent Decree shall be made by electronic funds transfer to
17 the United States Treasury according to current United States electronic funds transfer (EFT)
18 procedures. The United States shall provide a copy of current EFT procedures to Defendants
19 Robert D. Brown and Sunwest Express, Inc. pursuant to Section X (Notices) of this Consent
20 Decree. Concurrently with the EFT, Defendants Robert D. Brown and Sunwest Express, Inc.
21 shall each fax notice of their respective payment to the person designated as "point of contact"
22 on the EFT instructions and shall each send notice of such payment to EPA and the United States
23 Attorney's Office at the addresses listed in Section X (Notices). The notice of payment shall
24 identify:

- 25 i. the date and amount of money transferred;
26 ii. the name and address of the transferring bank;
27 iii. this case by name;

- 1 iv. the civil action number;
- 2 v. the United States Attorney's Office file number (2003V00535) and DOJ File No.
- 3 90-7-1-08112; and
- 4 vi. this Consent Decree (including date of entry).

5 **VI. STIPULATED PENALTIES**

6 9. Defendants shall be responsible for stipulated penalties as follows:

7 a. Defendant Robert D. Brown shall be liable for stipulated penalties to the

8 Plaintiff, as specified below, for failure to comply with the requirements of this

9 Consent Decree. "Compliance" by Defendant Robert D. Brown shall include

10 timely completion of the activities required of Robert D. Brown by this Consent

11 Decree.

12 i. For failure to pay the civil penalty pursuant to the terms of Section V

13 (Civil Penalty) of this Consent Decree, Defendant Robert D. Brown shall pay

14 a stipulated penalty of up to Five Hundred Dollars (\$500) per day for failure

15 to timely pay the civil penalty required by paragraph 7 of this Consent Decree.

16 b. Defendants Sunwest Express, Inc.; John B. Knight, Jr.; National Petroleum

17 Marketing, Inc.; and Navajo Trails, Inc. shall be jointly and severally liable for

18 stipulated penalties to the Plaintiff, as specified below, for failure to comply with

19 the requirements of this Consent Decree. "Compliance" by Defendants Sunwest

20 Express, Inc.; John B. Knight, Jr., National Petroleum Marketing, Inc., and Navajo

21 Trails, Inc. shall include timely completion of the activities required of Sunwest

22 Express, Inc. by this Consent Decree.

23 i. For failure to pay the civil penalty pursuant to the terms of Section V

24 (Civil Penalty) of this Consent Decree, Defendants John B. Knight, Jr.,

25 National Petroleum Marketing, Inc., Sunwest Express, Inc., and Navajo Trails,

26 Inc. shall pay a stipulated penalty of up to One Thousand Dollars (\$1000) per

1 day for failure to timely pay the civil penalty required by paragraph 7 of this
2 Consent Decree.

3 10. All stipulated penalties shall begin to accrue on the day a violation occurs and shall
4 continue to accrue until the violation ceases. Nothing herein shall prevent the simultaneous
5 accrual of separate penalties for separate violations of this Consent Decree. Any stipulated
6 penalty accruing pursuant to this Section shall be payable on demand and due not later than
7 thirty (30) days from EPA's written demand. Stipulated penalties shall be paid by EFT in the
8 same manner as set forth in paragraph 8. A transmittal letter shall accompany the payment of
9 stipulated penalties to refer to this case by name, civil action number, this Consent Decree
10 (including date of entry), USAO No. 2003V00535, and DOJ File No. 90-7-1-08112.

11 11. If Defendant Robert D. Brown, for his part, and/or the remaining Defendants, for
12 their parts, fail to pay stipulated penalties owed pursuant to this Consent Decree within thirty
13 (30) days of EPA's written demand, Defendant Robert D. Brown, for his part, and/or the
14 remaining Defendants, for their part, shall pay interest on their respective late payment for each
15 day of late payment after the initial thirty (30) day time period. The rate of interest shall be the
16 most recent interest rate determined pursuant to 28 U.S.C. § 1961. If any of the Defendants
17 dispute their respective obligation(s) to pay part or all of the stipulated penalty, they shall initiate
18 the dispute resolution procedure under Section VIII (Dispute Resolution) of this Consent Decree.
19 If any of the Defendants invoke dispute resolution, they shall pay the United States any amount
20 that they do not dispute.

21 12. Payment of stipulated penalties for violation of this Consent Decree is in addition
22 to the United States' right to seek additional monetary penalties or other relief for the violations
23 for which stipulated penalties were imposed. In addition, the United States reserves its right to
24 pursue any or all relief for any or all violations outside the provisions of this Consent Decree.

1 **VII. DISPUTE RESOLUTION**

2 13. Except where otherwise expressly provided by this Decree, the dispute resolution
3 procedure of this Section shall be available to resolve all disputes that may arise under or with
4 respect to this Decree.

5 14. Any dispute which arises under or with respect to this Decree shall in the first
6 instance be the subject of informal negotiations which shall not exceed thirty (30) days from the
7 time the dispute arises, unless agreed to in writing by the Parties. A dispute shall be considered
8 to have arisen when one party sends the other parties a written "Notice of Dispute."

9 15. In the event the Parties cannot resolve a dispute through informal negotiations under
10 the preceding Paragraph, any party may invoke formal dispute resolution by filing with the Court
11 and serving on the other parties a "Notice of Judicial Appeal" setting forth the matter in dispute,
12 the efforts made by the Parties to resolve the matter, the relief requested, and the schedule, if
13 any, within which the dispute must be resolved to ensure orderly implementation of this Decree.
14 A response to the filing of any such Notice of Judicial Appeal shall be filed and served on the
15 other parties within ten (10) days of receipt of such Notice of Judicial Appeal.

16 16. The invocation of formal dispute resolution under this Section shall not extend,
17 postpone, or affect in any way any of Defendants' obligations under this Decree not directly in
18 dispute. Except as to disputes concerning stipulated penalties as to which Paragraph 11 shall
19 apply, any stipulated penalties applicable to disputed matters shall continue to accrue, but
20 payment shall be stayed, pending resolution of the dispute. If Defendants do not fully prevail
21 on a disputed issue as to which stipulated penalties are applicable under this Decree, such
22 stipulated penalties shall be assessed and paid as provided in Section VI.

23 **VIII. EFFECT OF SETTLEMENT / RESERVATION OF RIGHTS**

24 17. Subject to the reservation of rights in the following paragraph, Defendants'
25 satisfaction of all the requirements of this Decree constitutes full settlement of and shall resolve
26 any and all civil and administrative liability Defendants may have to the United States for civil
27
28

1 penalties under RCRA. Section 9006(d)(2), 42 U.S.C. §§ 6928(g), 6991e(d)(2) and 40 C.F.R.
2 § 19.4, for the violations alleged in the Complaint.

3 18. Nothing in this Decree is intended to be, nor shall be construed as, a release from
4 liability or a covenant not to sue for any claim or cause of action, administrative or judicial, for:

5 a. any liability for past or future violations of any law, other than those alleged in the
6 Complaint;

7 b. any criminal liability;

8 c. any liability to the United States for natural resource damages.

9 19. Nothing in this Decree shall be construed as relieving Defendants of the obligation
10 to comply with RCRA or any of its implementing regulations, or with any other federal,
11 territorial, or local law. Except as expressly provided in this Decree, nothing in this Decree shall
12 limit the remedies available to Plaintiff for any violations by Defendants of law.

13 20. By their signatures to this Decree, Defendants certify to the best of their knowledge
14 and belief that the information they have related to the United States regarding their financial
15 condition is accurate. The United States has relied upon the foregoing information, in part, in
16 agreeing to the settlement terms contained herein. In the event that the foregoing information
17 provided by Defendants was, when provided, false or inaccurate in any material respect, then
18 the release of liability set forth in this Decree is voidable in the sole discretion of the United
19 States, and the United States shall be free to pursue claims against Defendants for the alleged
20 violations addressed by this Decree. Each of Defendants hereby waives any statute of
21 limitations defense that it may otherwise have had if the United States pursues any of Defendants
22 for such claims pursuant to this Paragraph.

23 **IX. COSTS**

24 21. The parties shall each bear their own costs of litigation of this action, including
25 attorneys fees.

1 **X. NOTICES**

2 22. Unless otherwise specified herein, whenever notifications or communications are
3 required by this Decree, they shall be made in writing and addressed as follows:

4 **To the United States:**

5 Chief, Civil Division
6 U.S. Attorney's Office
7 Two Renaissance Square
40 N. Central Ave., Ste. 1200
Phoenix, Arizona 85004-4408

8 **To Defendants:**

- 9 1) Robert D. Brown
c/o Harold Burr
10 Burr and Associates, P.C.
Eighteen East University Dr., Ste. 206
11 Mesa, Arizona 85201
- 12 2) John B. Knight, Jr.; National Petroleum Marketing, Inc.;
13 Sunwest Express, Inc; and Navajo Trails, Inc.
c/o Ronald Meyer
14 One Columbus Plaza,
3636 North Central Avenue, Suite 1050
15 Phoenix, Arizona 85012

16 **XI. MISCELLANEOUS**

17 23. The Court shall retain jurisdiction of this matter after entry of this Decree for the
18 purpose of entering such further order, direction, or relief as may be necessary or appropriate for
19 the construction, implementation, modification, or enforcement of this Decree.

20 24. The terms of this Decree may be modified only by a subsequent written agreement
21 signed by all the Parties. In the event of any material modification, the agreement shall also be
22 submitted for approval by the Court as a modification to this Decree.

23 25. The Parties agree and acknowledge that final approval and entry of this Consent
24 Decree is subject to the public notice and comment provisions of 28 C.F.R. § 50.7. The United
25 States reserves the right to withdraw or withhold its consent based upon review of any public
26 comments submitted regarding this Consent Decree. Defendants consent to the entry of this
27 Decree without further notice.

26. The United States shall be deemed a judgment creditor for purposes of collecting any past due penalties under this Consent Decree.

27. Civil penalty payments made under this Consent Decree shall not be tax deductible.

28. Each party shall bear its own costs and attorneys' fees in this action.

29. The undersigned representative of each Defendant certifies that he is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind the party represented to this document.

XII. FINAL JUDGMENT

30. Upon approval and entry of the Consent Decree by the Court, the Consent Decree will constitute a final judgment. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment pursuant to Federal Rules of Civil Procedure 54 and 58.

Dated and entered this _____ day of _____, 2008.

JOHN W. SEDWICK
UNITED STATES DISTRICT JUDGE

1 **For the Plaintiff United States of America:**

2 RONALD J. TENPAS
3 ssistant Attorney General
4 Environment & Natural Resources Division

5 Dated: 6/30/08

6 ELLEN M. MAHAN
7 Deputy Section Chief
8 Environmental Enforcement Section

9 DIANE J. HUMETEWA
10 United States Attorney
11 District of Arizona

12 Dated: 6/30/08

13 SUE A. KLEIN
14 Assistant United States Attorney
15 District of Arizona

16 Dated: 25 JUNE 2008

17 WAYNE NASTRI
18 Regional Administrator
19 U.S. Environmental Protection Agency,
20 Region IX
21 San Francisco, CA 94105

22 Dated: 6-9-08

23 MEREDITH NEWTON
24 Assistant Regional Counsel
25 U.S. Environmental Protection Agency,
26 Region IX
27 San Francisco, CA 94105

1 For Defendants John B. Knight, Jr.; National Petroleum Marketing, Inc.; Sunwest
2 Express, Inc.; and Navajo Trails, Inc.:
3

4
5 Dated 4/17/08

By: JOHN B. KNIGHT, JR.
10720 W. Indian School Rd.
PMB 304
Phoenix, Arizona 85037

8
9 Dated 4/17/08

By: NATIONAL PETROLEUM MARKETING, INC.
(discharged in bankruptcy)

11
12 Dated 4/17/08

By: SUNWEST EXPRESS, INC.

14
15 Dated 4/17/08

By: NAVAJO TRAILS, INC.

16
17 Dated 4/18/08

By: RONALD MEYER

19 For Defendant Robert D. Brown:
20

21
22 Dated _____

By: ROBERT D. BROWN

23
24 Dated _____

By: HAROLD D. BURR, JR.
25
26
27
28

1 For Defendants John B. Knight, Jr.; National Petroleum Marketing, Inc.; Sunwest
2 Express, Inc.; and Navajo Trails, Inc.:

3
4
5 Dated _____ By: _____
6 JOHN B. KNIGHT, JR.
7 10720 W. Indian School Rd.
8 PMB 304
9 Phoenix, Arizona 85037

10 Dated _____ By: _____
11 NATIONAL PETROLEUM MARKETING, INC.
12 (discharged in bankruptcy)

13 Dated _____ By: _____
14 SUNWEST EXPRESS, INC.

15 Dated _____ By: _____
16 NAVAJO TRAILS, INC.

17 Dated _____ By: _____
18 RONALD MEYER

19 For Defendant Robert D. Brown:

20
21 11-11-08 By: _____
22 Dated ROBERT D. BROWN

23 4-16-08 By: _____
24 Dated HAROLD D. BURR, JR.
25
26
27
28